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AGA
American Gas Association

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 12, 1999

Ms. Magalie Roman Salas
Commission Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.; TW-A325
Washington, D.C. 20554

Subject: WT Docket No. 99-217; FCC 99-141
Promotion of Competitive Networks in Local Telecommunications Markets
Notice of Inquiry

Attached herewith is one original and four copies of the response by the American Gas Association (AGA) to the subject Notice of Inquiry, that was published in the Federal Register, 64 FR pp. 41883-41884.

Sincerely,

G. J. Mosinskis

George J. Mosinskis

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Promotion of Competitive Networks In Local Telecommunications Markets	)))	WT Docket No. 99-217
Notice of Inquiry	)	FCC Docket No. 99-141

COMMENTS OF THE
AMERICAN GAS ASSOCIATION

Lori S. Traweek
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Operations and Engineering
American Gas Association
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Summary

The Federal Communications Commission ("FCC") has issued the current Notice of Inquiry to facilitate development of competitive telecommunications networks intended to provide consumers with alternatives to services provided by incumbent carriers. In these comments, the American Gas Association ("AGA") addresses the FCC's request for comments on "...reasonable and nondiscriminatory access to public right-of-way and competitively neutral state and local taxation." AGA is concerned about the effect the FCC's regulatory actions may have on other users of the public right-of-way, including natural gas distribution utilities. This effect could primarily manifest itself through local jurisdictions, which are attempting to mitigate collateral negative impacts on public right-of-ways due to rapid expansion in the telecommunications service sector. These local jurisdictions are considering regulatory measures that they propose to apply equally to all users of such right-of-ways. As a result, gas utilities are finding themselves bearing the burden of regulations imposed in response to construction activities of the telecommunications companies.

Therefore, in any resultant rule or regulation, AGA urges the FCC to consider the differences that exist between various service sectors, to explicitly state such differences, and to either adopt appropriate mitigating measures or to clearly state that the scope of the regulatory mandate is limited only to the utilities under this Commission's jurisdiction.

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COMMENTS OF
THE AMERICAN GAS ASSOCIATION

Pursuant to Section 1.415 of the Federal Communications Commission ("FCC") Rules, the American Gas Association ("AGA") hereby submits the comments in reply to the *Notice of Inquiry* published in the above referenced proceeding[1]. AGA addresses the FCC's request for comments on "...reasonable and nondiscriminatory access to public right-of-way and competitively neutral state and local taxation." While we applaud the FCC for its efforts to promote facilities-based competition in the telecommunications sector, we are concerned about the effect it will have on other users of the public right-of-way, including natural gas distribution utilities. This effect is primarily manifesting itself through local jurisdictions, which are attempting to mitigate collateral negative impacts on public right-of-ways due to rapid expansion in the telecommunications service sector. These local jurisdictions are considering regulatory measures that they propose to apply equally to <u>all users</u> of such right-of-ways. As a result, gas utilities are finding themselves bearing the burden of regulations imposed in response to construction activities of the telecommunications companies.

Therefore, in any resultant rule or regulation, we urge the FCC to consider the differences that exist between various service sectors, to explicitly state such

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[1]*Notice of Inquiry* in WT Docket No. 99-217, and CC Docket No. 99-141, 64 Fed. Reg. 41833 (Aug. 2, 1999).

differences, and to either adopt appropriate mitigating measures or to clearly state that the scope of the regulatory provisions is limited only to the utilities under its jurisdiction.

1. Introduction

The American Gas Association (AGA) represents 189 local natural gas utilities that deliver gas to customers in all fifty states. AGA members deliver natural gas to over 93 percent of the 60 million homes and businesses throughout the U.S. that use gas. Additionally, AGA provides services to member natural gas pipelines, marketers, gatherers, international gas companies and a variety of industry associates. AGA's members are regulated by the U.S. Department of Transportation's Research and Special Programs Administration (RSPA) or by its state grant agents. Our members work with RSPA's Office of Pipeline Safety to ensure the safe, reliable, and environmentally benign design, construction, operation and maintenance of the nation's pipeline distribution systems.

2. AGA supports competition in the telecommunications industry.

Given that AGA member companies will also be beneficiaries of economies resulting from competition in the telecommunications industry, AGA applauds the FCC for its efforts to promote competition. However, we are concerned that the associated negative impacts of the FCC's facilities-based strategy , if not properly mitigated, could affect natural gas utilities' use of the public right-of-way.

3. AGA urges the FCC to consider and clarify in its rulemakings the differences between users of the public right-of-way, so as to minimize or mitigate the negative impacts of the telecommunications service sector expansion on other users of such right-of-way.

We offer here the perspective from the natural gas utilities' point of view, with the reminder that in many cities and towns of this country such utilities have been providing gas to their customers since the turn of the century.

A large part of a natural gas utility's facilities are buried beneath pavement in a public right-of-way. As a result, it is often necessary to cut into the pavement in order to access existing facilities for routine maintenance or emergency repairs and to install new facilities. After completion of the work that necessitated the cut, the pavement is restored to a suitable finished surface and structural condition that are as good as existed before the required excavation.

As competition evolves in the natural gas industry, local gas utilities are aggressively pursuing efforts that will cut the time and costs of their operation and maintenance activities. The gas industry has sponsored research into techniques and best practices designed to reduce the time, costs, resources and disruption associated with street cuts and repairs. These best practices have enabled natural gas utilities to undertake and complete street cuts and pavement restoration more quickly, with less public impact, and often at a lower cost. Although many of these techniques can be called "trenchless", they are not entirely no-dig techniques. Each technique actually requires some excavation to reach or enter a buried pipe. However, these techniques involve less digging and therefore minimal excavation.

Competition in the natural gas industry is based on "open access" to existing facilities, such as the underground system of natural gas pipes owned and operated by interstate natural gas pipelines and local natural gas utilities. Added service to a customer often involves only extending a line from the existing pipeline in the public right-of-way to the customer's building or equipment location. This often involves minimal disturbance to the public right-of-way, as it only represents added flow within the existing capacity of the pipeline.

In contrast, facilities-based competition in the telecommunications industry triggered a significant amount of new construction that has affected streets and public rights-of-way in urban areas from coast-to-coast. Much of this activity was prompted by passage of the Telecommunications Act of 1996, which gave to communications providers broad latitude to install and market communications systems nationwide. As a recent *USA Today* article noted, "(the law) has also created a public works nightmare that no one was quite prepared for."

For example, Washington, D.C. had been averaging about 9,000 applications per year from companies wanting to make repairs or install new lines underground. In 1998, the number of applications zoomed to 15,000. Nine new telecommunications companies are seeking permits.

Local governments are concerned about the negative impact multiple construction projects are imposing on the useful life of their streets. Many cities and counties contend that the high number of street cuts and repetitive construction projects accelerate the deterioration of roadways, requiring local governments to increase public works budgets to maintain or repair the damage. As a result, many cities and counties have considered strategies to generate revenues for the maintenance and improvement of public streets at the expense of natural gas utilities and other excavators (permit holders) who use the public right-of-way.

Not all permit holders are alike, and therefore the affects differ. Some, like local gas utilities, are utilities that operate under franchise agreements with each city or county. These agreements often include an annual compensation fee paid to the local jurisdiction for the utility's use of the public right-of-way and any attendant wear and tear. Such franchise agreements may include an obligation for the utility to restore street-cuts and repair defects in workmanship for the life of the repair. Other permit holders may be entirely free of contractual obligations with governments.

The intent of "...reasonable and nondiscriminatory access to public right-of-way and competitively neutral state and local taxation" is certainly laudable when it comes to competition among utilities of the same service sector. However it is hardly fair to impose added regulatory requirements on one sector to compensate for added activity in another sector which has, in some cases, significantly increased operating costs. In summary, the objective of any regulatory action by this Commission should be the telecommunications sector. Any resulting mandate should clearly state this. It will help avoid interpretations by local jurisdictions that might give rise to unfair local regulatory requirements and/or cross-subsidies of service sectors.

We therefore urge the FCC to consider the differences that exist between various service sectors, to clearly state such differences, and to either adopt appropriate mitigating measures in any resultant rule or regulation or to clearly state that the scope of the regulatory provisions is limited only to the utilities under its jurisdiction.

Conclusion

AGA appreciates this opportunity to comment on this Notice and recommends that the FCC rulemakings clearly differentiate between users of the public right-of-way and that appropriate mitigating measures are adopted, so as to prevent local jurisdictions from applying unfair economic measures that could in effect regulate some users at the expense of other users of such right-of-way.

Respectfully submitted,

By: Lori S. Traweek

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